

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**
Case No.: 3:19-cv-00580-RJC

ANDREW ELLIOTT WILKINSON,

Plaintiff,

v.

WELLS FARGO BANK, N.A.; WELLS FARGO CLEARING SERVICES, LLC d/b/a WELLS FARGO ADVISORS and/or FIRST CLEARING; ANGIE OSTENDARP; MIKE QUIMBY; FINRA; and PLACE AND HANLEY LLC,

Defendants.

**DEFENDANTS WELLS FARGO BANK,
N.A., WELLS FARGO CLEARING
SERVICES, LLC, ANGIE OSTENDARP,
AND MIKE QUIMBY'S MOTION TO
DISMISS COMPLAINT**

[Fed. R. Civ. P. 8, 10(b), and 12(b)(6)]

Pursuant to Rules 8, 10(b), and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Wells Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors and/or First Clearing (“WFCS”),¹ Wells Fargo Bank, N.A., Angie Ostendarp, and Mike Quimby (collectively, the “Moving Defendants”) hereby move, through undersigned counsel, for the dismissal of all of Plaintiff’s claims against them for the reasons articulated in the Moving Defendants’ accompanying Memorandum of Law in Support of its Motion to Dismiss Plaintiff’s Complaint, which is incorporated herein by reference. By way of summary, Plaintiff’s Complaint should be dismissed because:

¹ Although Plaintiff purports to sue “Wells Fargo Advisors” and “1st Clearing LLC” (Compl., Doc. 1-1 at 3, 82), Wells Fargo Advisors and First Clearing are merely trade names used by Wells Fargo Clearing Services, LLC. To expedite this proceeding (and in recognition of the pro se nature of the action), the present Motion and supporting Memorandum are being submitted on behalf of WFCS, the actual Wells Fargo entity it appears Plaintiff was attempting to sue. Similarly, the Complaint makes reference to “Wells Fargo Companies and Stockholders,” but this is not a discrete legal entity, nor does it appear on Plaintiff’s “List of Defendants Revised.” (See *id.* at 82.) In any event, for the reasons set forth below, Plaintiff has not pled viable claims against any “Wells Fargo” entity or representative.

1. Plaintiff's purported claims are barred by the doctrines of res judicata and collateral estoppel in light of prior proceedings before this Court and the Financial Industry Regulatory Authority;
2. Plaintiff's purported claims are untimely;
3. Plaintiff failed to comply with the basic pleading standards set forth in Rules 8 and 10 of the Federal Rules of Civil Procedure with respect to all of his claims;
4. Plaintiff's purported claims fail as a matter of law because they are premised on unreasonable inferences and are therefore wholly implausible;
5. Plaintiff failed to state a claim for criminal violations because, *inter alia*, he has not identified a private right of action with respect to such supposed violations; and
6. Plaintiff failed to state a claim for constitutional violations pursuant to 42 U.S.C. § 1983 because, *inter alia*, he did not adequately identify the constitutional right allegedly violated or establish that any of the Moving Defendants were a state actor or operating under color of state law.

WHEREFORE, the Moving Defendants respectfully request that the Court enter an Order dismissing Plaintiff's claims against them with prejudice and for such other relief the Court deems just and proper.

Dated: December 6, 2019

Womble Bond Dickinson (US) LLP

/s/ James S. Derrick

James S. Derrick (N.C. State Bar No. 39632)
Debbie W. Harden (N.C. State Bar No. 10576)
301 South College Street, Suite 3500
Charlotte, NC 28202-6037
Telephone: (704) 331-4943
Email: debbie.harden@wbd-us.com
Email: james.derrick@wbd-us.com

*Attorneys for Defendants Wells Fargo Bank, N.A.; Wells
Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors
and/or First Clearing; Angie Ostendarp; and Mike Quimby*

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2019 the foregoing **DEFENDANTS WELLS FARGO BANK, N.A., WELLS FARGO CLEARING SERVICES, LLC, ANGIE OSTENDARP, AND MIKE QUIMBY'S MOTION TO DISMISS COMPLAINT** was filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing and serve all CM/ECF recipients.

I further certify that on December 6, 2019 I served the following non-CM/ECF participants by U.S. Mail as follows:

Andrew Elliott Wilkinson
1430 Pine Tree Drive
Charlotte, North Carolina 28270

Pro Se Plaintiff

Place and Hawley LLC
1415 Panther Lane
Naples, FL 34109

Defendant

FINRA
c/o Terri Reicher
1735 K Street
Washington, DC 20006

Defendant

/s/ James S. Derrick

James S. Derrick (N.C. Bar No. 39632)